

MAY 4th, 2014

Jerry L. Davis #368483
Cedar Creek Corrections Center
P. O. Box 37
Littlerock, WA 98556-0037

RECEIVED
MAY - 8 2014
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

ATTN: David Ponzoha, Clerk
Court Of Appeals, Div. II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

RE: STATE vs. DAVIS, APPEALS NO: 45274-0-II

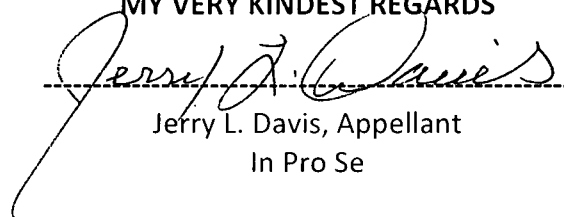
Dear Mr. Ponzoha, Clerk of the Appeals Court:

Enclosed please find a document entitled JUDICIAL NOTICE/SUPPLIMENTAL TO STATEMENT OF ADDITIONAL GROUNDS IAC CLAIM, that I request be filed for this Courts review and consideration.

Additional litigation is critical to raise my IAC Claim, which I've attempted to do in the enclosed document.

Thank you so much for your time and understanding in this time sensitive matter.

MY VERY KINDEST REGARDS


Jerry L. Davis, Appellant
In Pro Se

With enclosures:

Cc: Stephanie C. Cunningham, Attorney
File.

22 pages
Total Enclosed

COURT OF APPEALS
DIVISION II
2011-12-03 PM 12:07
STATE OF WASHINGTON
PY 11/17

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

**STATE OF WASHINGTON,
Respondent,**

Vs.

**JERRY LYNN DAVIS,
Appellant.**

NO: 45274-0-II

PIERCE County Case No's: 12-1-03559-0; 13-1-0077-7.
(Consol.)

JUDICIAL NOTICE

SUPLIMENTAL TO STATEMENT OF

ADDITIONAL GROUNDS IAC CLAIM

COMES NOW, JERRY LYNN DAVIS, Appellant in pro se pursuant to RAP 10.10, and moves the Honorable Court of Appeals for permission to file the foregoing JUDICIAL NOTICE/SUPLIMENTAL TO STATEMENT OF ADDITIONAL GROUNDS IAC CLAIM.

Will the Court please note that Appellant is without a legal law library or effective legal assistance to help in this matter and is requesting/praying the Court will liberally interpret to promote justice and facilitate equal protection of the law. SEE: RAP 1.2 (c); Haines v. Kerner, 404 U.S. 519 (1972).

JUDICIAL NOTICE

Regrettably, Appellant comes before the Court to raise a valid complaint regarding Appellant counsel, Stephanie C. Cunningham. Appellant has diligently requested Ms. Cunningham to request ALL court hearing transcripts, which she has failed to, do, to ensure Appellant does receive a full and fair direct appeal. First it was the sentencing transcripts to demonstrate the issue on Appellants DOSA request, and PLEA BREACH. Now it's the continuance hearing transcripts to demonstrate the CUMULITIVE ERRORS on an IAC claim. SEE: Appellants attached DECLARATION herein.

With the entire record for this Courts review, a serious IAC claim must be raised, that will warrant a reversal in cause no: 12-1-03559-0 [Alford plea], and a reversal in cause no: 13-1-00377-7 for a resentencing on a DOSA opportunity as a matter of law. The Amended Opening Brief and Appellants' SAG has already been filed. The Respondents' Brief is due very soon and Appellant is concerned his relevant IAC claim will not get filed due to Ms. Cunningham's actions.

Will the Court intervene and direct Ms. Cunningham to represent Appellant effectively in his appeal, and to request ALL the court records so she may raise the cumulative errors and IAC claim as I've requested of her to do in my behalf.

SUPPLIMENTAL STATEMENT OF ADDITIONAL GROUNDS IAC CLAIM

Both the state and federal constitutions guarantee the accused the right to effective assistance of counsel. Strickland v. Washington, 366 U.S. 668, 104 S.Ct. 2052 (1984). To show ineffective assistance, a defendant must show that, despite a presumption of effectiveness, counsel's representation was deficient and that the deficiency caused prejudice. State v. Bowerman, 155 Wn. 2d 794, 808, 802 P.2d 116 (1990). Counsel's performance is deficient if it falls below an "objective standard of reasonableness" and was not sound strategy. SEE: In re PRP of Rice, 118 Wn. 2d 876, 888, 828 P.2d 1086, cert. denied, 509 U.S. 958 (1992). That performance prejudices the defense when there is a reasonable probability that, but for counsel's deficient performance, the results would have been different. Hendrickson, 129 Wn. 2d at 78. A "reasonable probability" is one which is "sufficient to undermine confidence in the outcome". State v. Thomas, 109 Wn. 2d 222, 226, 743 P.2d 816 (1987).

In the present case, cause no: 12-1-03559-0, attempted burglary in the second degree, trial counsel was ineffective for failing to conduct an investigation WHATSOEVER. An investigation would have shown that the alleged victim, Mr. Duvalls', written statement at the time of arrest did not support the charging DECLARATION, which became the DECLARATION OF PROBABLE CAUSE. The elements in the DECLARATION FOR PROBABLE CAUSE do not support a conviction. At p.2: "PER THE VICTIM, HIS PROPERTY IS FENCED WHERE IT CAN BE FENCED, AND THERE IS A STEEP NATURAL BARRIER THAT CANNOT BE FENCED". SEE: State v. Engel, 166 Wn. 2d 572, 210 P.3d 1007 (2009). An investigation would have further shown that there was a

water line (swamp) that could not be fenced either. Our Washington Supreme Court reversed the Engel case based on the exact same circumstances as in this case.

When the alleged victim, Mr. Duvall, refused to be deposed, trial counsel was not only ineffective for not filing the MOTION TO DEPOSE, but counsel was also ineffective for not moving the court to dismiss the case entirely. Appellant filed a BRADY MOTION and had a constitutional right to face his accuser, but was deprived of said right, due to counsels' ineffective assistance of counsel that was prejudicial. Trial counsel went on record in a continuance hearing and admitted failing to file the MOTION TO DEPOSE the alleged victim, Mr. Duvall, and when counsel requested yet another continuance to file said MOTION, the court denied the request. Both of these actions were prejudicial to Appellant, without exception.

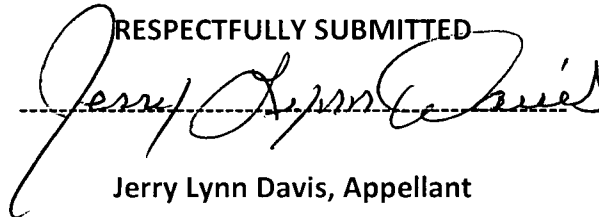
Trial counsel was further ineffective for failing to subpoena Appellants' KEY WITNESS, Ricky Powell, and then waited to inform Appellant of these assertions/facts on the day of trial. SEE: Plea Hearing Transcripts, p.6. " I DON'T HAVE HIM (Powell) UNDER SUBPOENA" ... "BUT THIS ALL FACTORS INTO MY DISCUSSION WITH MR. DAVIS ABOUT HIS RISK AT TRIAL". The record demonstrates that counsel waited until the day of trial to inform Appellant of these facts, and then only gave Appellant one and a half hours to make up his mind for a plea deal, or RISK losing at trial that day. SEE: Court Minutes.

Pursuant to the IAC cumulative errors, trial counsel was clearly ineffective, and should NEVER have advised Appellant to plead guilty in an Alford Plea where the elements did not support a conviction and warrants a reversal in the interest of justice.

CONCLUSION

Therefore, Trial counsels performance of representation was so flagrantly ill-intended that there is no cure for the harm caused, and due to the cumulative errors, the Honorable Court of Appeals should reverse the attempted burglary case, cause no: 12-1-03559-0, and remand for resentencing in cause no: 13-1-00377-7, as a matter of law for a DOSA opportunity.

Dated this 4th day of May, 2014.

RESPECTFULLY SUBMITTED

Jerry Lynn Davis, Appellant

In Pro Se

APPINDIX OF EXHIBITS ATTACHED

April 23, 2014

Jerry L. Davis, DOC# 368483
Cedar Creek Corrections Center
PO Box 37
Littlerock, WA 98556-0037

RE: Your appeal in *State v. Davis*
Pierce Co. Nos. 12-1-03559-0 & 13-1-00377-7
Appeal No. 45274-0-II

Dear Mr. Davis,

I have received your recent letters. Not every continuance hearing is recorded. I do not see any notes indicating that the continuance hearings in May, June or July were recorded. But I have contacted the court reporters that would have been there on those dates and asked them to verify whether they do or do not have notes or recordings from those hearings. If they were, we still need to file a motion asking the Court of Appeals for permission to order them. The Court may find that they are not "necessary" for your appeal because you waived your rights to challenge pretrial rulings and speedy trial violations when you entered into a guilty plea. But I will ask the Court for permission, and if they grant permission I will file the necessary paperwork asking the court reporters to make the additional transcripts.

It is also important to remember that it is not enough to show that your attorney failed to do some act that he should have done. You must also be able to show, from the existing record, that your attorney's failure to act rendered your guilty plea involuntary.

Let me address your other question. The Court of Appeals will only consider documents that are in the court file and the transcripts from the hearings. The Court will not consider discovery items (such as police reports or witness statements) unless they were filed in the Superior Court file or entered as an exhibit at a pretrial hearing or sentencing, or were considered by the judge at the plea hearing or sentencing. The discovery documents you mentioned are not in the record.

I will let you know what the court reporters say about the hearings. In the meantime, please fill out the enclosed form so that I may attach it to any motion I may file in this matter.

Sincerely yours,



STEPHANIE C. CUNNINGHAM

April 27, 2014

Jerry Davis #368483
Cedar Creek Corrections Center
P.O. Box 37
Littlerock, WA 98556-0037

Stephanie C. Cunningham
Attorney At Law
4616 25th Avenue N.E., #552
Seattle, Wa 98105

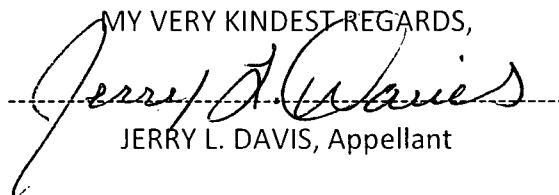
RE: State vs. Davis, Appeal NO: 45274-0-II

Dear Ms. Cunningham,

I received your letter dated April 23, 2014 requesting that I complete the DECLARATION OF APPELLANT. As you requested please find enclosed my DECLARATION I wish to have filed in the Court of Appeals with your motion and supporting authority.

Ms. Cunningham, it is my understanding you was also representing Mr. Anderson on Appeal out of a Pierce County case, who is now being represented by Attorney Barbara Corey. I read the Ineffective Assistance of Counsel Claim she litigated in their Opening Brief. Will you be including an Ineffective Assistance of Counsel Claim in my Direct Appeal as well?

Thank you for promptly requesting the other continuance transcripts so we may make sure I receive a fair and complete direct appeal in this matter and for filing the motion in my behalf in a "Time-Sensitive" fashion.

MY VERY KINDEST REGARDS,

JERRY L. DAVIS, Appellant

Ps: Will you please mail me a copy of the motion your filing?

W/Enclosures.

Cc: File

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

APPEAL NO: 45274-0-II

VS.

DECLARATION OF
APPELLANT

JERRY LYNN DAVIS,
APPELLANT,

I, JERRY LYNN DAVIS, declare as follows:

1. I am the Appellant in the above captioned matter.

2. I believe the transcripts from the continuance hearings are necessary for a full and Fair appeal in my case because without them Appellants' Counsel nor I will be able to raise all the "CUMULATIVE ERRORS" of APPEALABLE ISSUES for the Courts fair and just review, to include, INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL(S) that fail below the standard range of performance for representation under the 6th and 14th Amendment of the United States Constitution. Trial counsel(s) failings to perform even the minimal duties resulted in deficiencies that were seriously prejudicial to Appellant and the outcome to his proceedings.

3. In Pierce County Cause NO: 12-1-03559-0 trial counsel goes on record and informs the court that he failed to draft and file a critical MOTION TO DEPOSE the alleged victim and the States witness, Mr. Duvall. Trial counsel then requested yet another continuance to draft and file said MOTION, but was denied said continuance request. These two actions by both trial counsel and the Court were prejudicial to Appellant, which lead up to the ALFORD PLEA that Appellant was coerced into taking in cause no: 12-1-03559-0. For example: At page 6 of the PLEA TRANSCRIPTS trial counsel states. "I DON'T HAVE HIM (Powell) UNDER SUBPOENA"..."BUT THIS ALL FACTORS INTO MY DISCUSSION WITH MR. DAVIS ABOUT HIS RISK AT TRIAL". Appellant declares that trial counsel waited until the day of trial to inform his client of his failure to subpoena Appellants "KEY WITNESS" which would have cleared Appellant of involvement in cause no: 12-1-03559-0. And in the Court minutes of proceedings filed on 8/5/2013 there is evidence that Appellant was only given an hour and a half of time to make up his mind over a lunch break to understand his RISK of going to trial. SEE ATTACHED COURT MINUTES OF PROCEEDINGS FILED 8/5/2013 IN CAUSE NO: 12-1-003559-0.

4. Appellant declares that trial counsel(s) performance of representation was so flagrantly ill-intended that there is no cure for the harm caused, and due to the "CUMULATIVE ERRORS", the requested continuance transcripts are necessary for Appellant to receive a fair appeal that may demonstrate to this Honorable Court that Appellant did receive ineffective assistance of counsel that was deficient and prejudicial and warrants reversal of the ALFORD PLEA. See: Strickland vs. State Of Washington, U.S Sup. Ct. SEE ALSO: North Caroline vs. Alford, 400 U.S. 25, 91 S. Ct.160, 27 L. Ed. 2d. 162 (1970); STATE OF WASHINGTON vs. ENGAL, 166 Wn. 2d 572, 210 P. 3d 1007 (2009). The elements for an attempted burglary charge do not exist in cause no: 12-1-03559-0, which was withheld from Appellant by trial counsel.

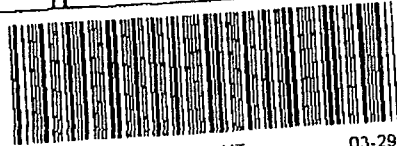
I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND UNDERSTANDING.


JERRY LYNN DAVIS, APPELLANT

DATE: APRIL 27TH, 2014

WITH ATTACHMENT: 8/5/2013 Court minutes of proceedings

Cc: Stephanie C. Cunningham, Attorney At Law
File.



12-1-03559-0

40263298

MT

03-29-13

FILED
IN COUNTY CLERK'S OFFICE

AM. MAR 28 2013 PM.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY DEPUTY

[Original]

Pierce County Superior Court, State of Washington

State of Washington, } Cause No. 12-1-03559-0
Plaintiff,

vs.

Jerry Lynn Davis, } Motion To Have Victim And All
Defendant - Petitioner. } States Witnesses Interviewed
Before Trial Starts Under Brady
vs. The State of Maryland, 373 U.S. 83,
10 1st 2d 215, 83 S. Ct. 1194 (1963)

Comes Now: The defendant herein and respectfully
moves this Court for an order under the U.S. Supreme Court in
Brady vs. The State of Maryland, 373 U.S. 83, 10 1st 2d 215,
83 S. Ct. 1194 (1963) to have victim and all state's witnesses
interviewed before the start of trial, which is on or about 5-8-2013.
That I am the defendant and that I have a 5th, 14th
Amendment right of due process under the U.S. Constitution
to interview the victim/victims and all the states witnesses
in this case. Trial starts on or about May 8, 2013.

Dated this 26th day of March, 2013.By: Jerry Lynn Davis
Jerry Lynn Davis, Defendant -
Petitioner

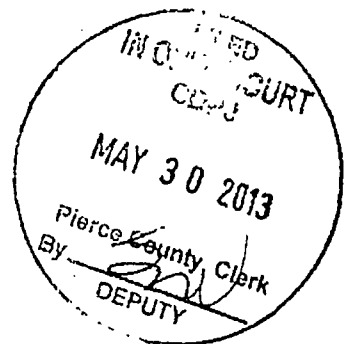
CC: File, and:

I certify mailing true
copy to prosecutor.



12-1-03559-0 40613683 ORCTD 05-30-13

N.C.



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

JERRY LYNN DAVIS,
DefendantCause No. 12-1-03559-0

ORDER CONTINUING TRIAL

Case Age 25 Prior Continuances 3

This motion for continuance is brought by ☐ state ☒ defendant ☐ court.
 Upon agreement of the parties pursuant to CrR 3 3(f)(1) or
☐ is required in the administration of justice pursuant to CrR 3 3(f)(2) and the defendant will not be prejudiced in his or her defense or
☐ for administrative necessity.

Reasons.

MOTION TO DENY ALLEGED VICTIMS NEEDS TO
BE DRAFTED, DOCKETED AND HEARD.

☐ RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF <u>5/20/13</u>	IS CONTINUED TO: <u>7/25/13</u> @ 8:30 am Room <u>260</u> <u>CAAT</u> ©			

Expiration date is: 8/22/13 (Defendant's presence not required)TFT days remaining: 30DONE IN OPEN COURT this 30th day of MAY, 2013.

Jerry L. Davis
 Defendant

Michael
 Attorney for Defendant/Bar #33603

Judge

Prosecuting Attorney/Bar # 18602

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

 Interpreter/Certified/Qualified Pierce County, Washington

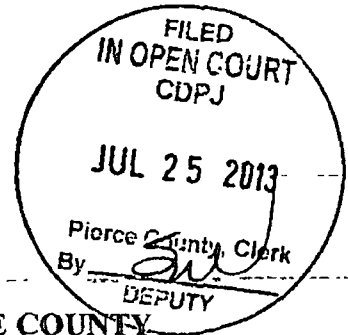
 Court Reporter

This never
was done!



12-1-03559-0 40928429 ORCTD 07-25-13

Motion 7/14/13
AG



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

JERRY L. DAVIS
 Defendant

Cause No. *12-1-03559-0*

ORDER CONTINUING TRIAL

Case Age *272* Prior Continuances *4*

This motion for continuance is brought by ☐ state ☐ defendant ☐ court.
☐ upon agreement of the parties pursuant to CrR 3.3(f)(1) or
☐ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
☐ for administrative necessity.

Reasons:

Defendant still needs to make motion for deposition of state's witnesses and needs to be substituted as a witness who has changed his name.

☐ RCW 10 46 085 (child victim/sex offense) applies The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF:	IS CONTINUED TO: <i>7/29/13</i> @ 8:30 am Room <i>260 CABT</i>			

Expiration date is: *10/23/13* (Defendant's presence not required) TFT days remaining *30*DONE IN OPEN COURT this *25th* day of *July* 2013

Defendant

Judge

Attorney for Defendant/Bar # *33603*Prosecuting Attorney/Bar # *16412*

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington

Interpreter/Certified/Qualified

Court Reporter



12-1-03559-0 40492081 ORCTD 05-08-13

NIC

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
Plaintiff

vs.

TERRY LYNN DAVIDS,
DefendantCause No. 12-1-03559-0

ORDER CONTINUING TRIAL

Case Age 194 Prior Continuances 2This motion for continuance is brought by ☐ state ☒ defendant ☐ court.☒ upon agreement of the parties pursuant to CrR 3.3(f)(1) or☐ is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or☐ for administrative necessity.Reasons: DEFENSE NEEDS TO OBTAIN TRANSFER OF PRISONER/
WITNESS RICKY POWELL☐ RCW 10 46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING				
<input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>5/8/13</u>	IS CONTINUED TO: <u>5/30/13 @ 8:30 am Room 360</u>			

Expiration date is: 6/30/13 (Defendant's presence not required) TFT days remaining: 37DONE IN OPEN COURT this 8th day of MAY, 2013RESERVING ALL RIGHTS TO PRIOR VIOLATIONS
Defendant: Terry Lynn Davids

Attorney for Defendant/Bar #33603

Judge: [Signature]Prosecuting Attorney/Bar # 18272

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Interpreter/Certified/Qualified_____
Court Reporter

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

STATE OF WASHINGTON

Cause Number. 12-1-03559-0

MEMORANDUM OF
JOURNAL ENTRY

vs.

DAVIS, JERRY LYNN

Page 2 of 3

Judge.

STEPHANIE A AREND

MINUTES OF PROCEEDING

Judicial Assistant/Clerk: Dan Vessels

Court Reporter JAN-MARIE GLAZE

Start Date/Time: 08/05/13 11:54 AM

August 05, 2013 11:53 AM Court in session. All parties present and ready to proceed. DPA Kathleen Oliver present in this matter for the State. Attorney James Schoenberger present with the Defendant who is out of custody. DPA Oliver calls the case 11:54 AM Attorney Schoenberger addresses the Court in this matter and requests the Court allow the Defendant to make a determination on a plea deal by 1:30. 11:55 AM Court inquires with State regarding their position on the plea request from Defense. DPA Oliver responds. 11:56 AM Court inquires with DPA Oliver regarding jury needs and pretrial matters. 11:58 AM Attorney Schoenberger addresses the Court regarding scheduling issue with one Defendant witness. 12:00 PM Court at recess until 1:30.

End Date/Time: 08/05/13 12:00 PM

*one and a half hours
to make up my mind
for a plea deal on the
day of my trial.*

Judicial Assistant/Clerk Dan Vessels

Court Reporter JAN-MARIE GLAZE

Start Date/Time: 08/05/13 1:32 PM

August 05, 2013 01:32 PM Court reconvenes. DPA Oliver present for the State. Attorney Schoenberger present without defendant. Court inquires with Attorney Schoenberger regarding the location of his client. Attorney Schoenberger responds that he has no information regarding the location of his client. 01 34 PM Defendant appears in Court. Court informs parties jury administration will have jurors ready for voir dire at 1:45. Attorney Schoenberger informs the Court his client will accept a plea in this matter. Attorney Schoenberger will review the plea agreement with the defendant.

01:51 PM Court reconvenes. DPA Oliver addresses the court regarding a Plea in this matter 01:53 PM Attorney Schoenberger addresses the Court regarding entry of plea in this matter. 01:53 PM Court reviews Declaration of Probable Cause in this matter. 01:55 PM Court accepts amended information and begins colloquy with Defendant. 01:57 PM Court reviews Statement of Defendant on Guilty Plea with Defendant. 02:05 PM Defendant

JUDGE STEPHANIE A AREND Year 2013

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

State of Washington
Respondent

Vs

Jerry Lynn Davis
Appellant

No. 45274-0-II (Consol.)

Pierce County Superior Court
Cause No's: 12-1-03559-0 and
13-1-00377-7

Comes now Jerry Lynn Davis, pro se, pursuant to RAP 10.10 (e) with statement of additional grounds for the Courts review. 1. The Elements Do Not Support A Conviction For Burglary In Cause No. 12-1-03559-0; 2. Specific Performance of Guilty Plea Agreement (DOSA) Binding Contract.

STANDARD OF REVIEW

Appellant is requesting to come before the Court in Pro Se to raise additional (supplemental) Ground(s) pursuant to RAP 10.10(e). Appellant is without a law library for research, and prays the Court will be liberally interpreted to promote justice and facilitate the decision of this matter on their merits. **RAP 1.2(c); Haines v. Kerner, 404 U.S 519 (1972).**

Further, Appellant fully incorporates all the information in Appellant's Opening Brief filed by attorney, Stephanie C. Cunningham, as if fully incorporated herein. Appellants' Attorney has also filed an **AMENDED OPENING BRIEF** that appellant incorporates all of the information in as if fully incorporated herein. Further, Appellant posted for mailing on March 27, 2014 a **PRO SE**

ADDITIONAL SUPPLIMENTAL GROUNDS pursuant to RAP 10.10(e) that Appellant is also incorporating herein for the Courts review in this Direct Appeal. **SPECIFIC PERFORMANCE OF GUILTY PLEA AGREEMENT (DOSA) BINDING CONTRACT ISSUE.**

ADDITIONAL (SUPPLIMENTAL) GROUND I

In Appellant Counsels **AMENDED OPENING BRIEF** at p.10, she states in relevant part: "There is no indication in the record that Davis understood that the facts alleged in the Declaration would not support a conviction for either the original burglary charge or the amended charge of attempted burglary. In fact, by asserting that the Declaration contained sufficient facts, the record actually shows that Davis was unaware that the alleged facts would not support a burglary conviction".

Appellant wishes to bring to the Courts attention Facts and Evidence from the reviewable record that demonstrates Appellant did not know the elements did not exist for him to be charged with a burglary, was wishing to have a fair trial to prove his innocence, but was deprived in doing so. For example: On March 28, 2013 a pro se motion to have victim and all states witnesses interviewed before trial starts under Brady vs. The State Of Maryland, 373 U.S. 83 (1963) was filed. The alleged victim, Mr. Duvall, refused to give a deposition so trial counsel informed the trial court that the defense intended to file a motion to depose Mr. Duvall. SEE: **ORDER CONTINUING TRIAL** filed on May 30, 2013; and again on July 25, 2013. Trial counsel never did file said motion to depose Mr. Duvall regarding his TRUTHFULNESS, the record shows. Mr. Duvall, the alleged victim in cause no. 12-1-03559-0 provided a hand written statement, the FRESHEST TIME OF HIS MEMORY, indicating 1. THAT A MAN CAME DOWN ON HIS PROPERTY FIRST AND THEN AWHILE LATER A MAN AND WOMAN CAME DOWN AND TURNED TO LEAVE

AND MR. DUVALL JUMPED OUT OF THE BUSHES WITH A GUN, FROM WHERE HE WAS CLOSELY WATCHING EVERYTHING, ORDERING EVERYONE TO THE GROUND AND STARTED FIRING SHOTS.

2. THAT MR. DAVIS THREATENED TO F----- KILL HIM-- TO GET AWAY... (While Mr. Davis was being shot at), yet the NEIGHBOR makes no mention of said threat in his hand written statement. And 3. MR. DUVALL STATES IN HIS WRITTEN STATEMENT THAT NOTHING FROM THE CAR BELONGED TO HIM AS STOLEN. Trial Counsel was ineffective for not addressing the original WRITTEN STATEMENT from the victim, Mr. Duvall that would have demonstrated the ELEMENTS for burglary did not exist. Trial Counsel should have questioned that the DECLARATION FOR PROBABLE CAUSE was different than the victims WRITTEN STATEMENT at time of incident. The victim refused Appellants requested deposition upon these assertions. Trial Counsel did not conduct an investigation in cause no: 12-1-03559-0 whatsoever that would have shown insufficient evidence to support a conviction, and failed to disclose to Appellant all these facts before making an informed decision to plead guilty. Appellant contends that a manifest injustice has occurred in this matter and should be reversed. Trial Counsel deprived Appellant of his right to face his accuser by failing to file the motion to depose the victim, Mr. Duvall, as demonstrated by the reviewable record. SEE: APPENDIX/EXHIBIT. Trial Counsel did get the trial court to **ORDER FOR TRANSFER OF PRISONER, RICKY LEE POWELL**, filed on July 25, 2013, only to continue the trial and send Appellants key witness back to prison. Appellant was picking jury and had planned on going to trial on August 5, 2013 when trial counsel advised Appellant that he failed to subpoena RICKY LEE POWELL and that a plea deal was in Appellants best interest at that point which took place on the day of trial and only giving Appellant 1 and a half hours to make up his mind to take a plea deal or lose at trial. SEE: **PLEA TRASCRIPTS, P.6, "I**

DON'T HAVE HIM (POWELL) UNDER SUBPOENA"...BUT THIS ALL FACTORS INTO MY DISCUSSION WITH MR.DAVIS ABOUT HIS RISK AT TRIAL".

Appellant has diligently been attempting to receive a copy of his entire (redacted) case files, but has not been very successful. SEE: ATTACHED LETTER FROM DEPARTMENT OF ASSIGNED COUNSEL DATED MARCH 11, 2014, where Appellant has finally been able to read the DECLARATION FOR DETERMINING PROBABLE CAUSE, for the first time and requested Appellant Attorney to file the **AMENDED OPENING BRIEF** for this courts just review. CrR 4.7(h) (3) provides in relevant part: "Further, a defense attorney SHALL be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court".

Appellant submits that perhaps trial counsels performance was deficient, that the standard for effective assistance of counsel was not met under the 6th amendment of the U.S. Constitution, and that appropriate relief is warranted.

Pursuant to the ENGEL case, Appellant prays for the Court to reverse the guilty plea conviction in cause no. 12-1-03559-0, because clearly the elements do not exist for a conviction, coupled with compelling facts and evidence from the record. SEE: APPENDIX. The Washington Supreme Court overturned the ENGEL decision.

ADDITIONAL (SUPPLIMENTAL) GROUND II

In the **Amended Opening Brief** Appellant Counsel argued that Appellant was eligible for a DOSA sentence pursuant to RCW 9.94A.660 (1) (c), because his prior past violence was over 10 years ago. As a matter of law the Court could have given the Appellant a chance to embrace a

much needed treatment opportunity through a DOSA sentence, and still can, which would assist Appellant with his re-entry back into society as a foundation towards him attending college.

Appellant submits that in his plea agreement he did initial for a DOSA request and that the plea deal was stipulated to on this matter. Appellant did request DOSA, initialed for the Court to consider DOSA, and had counsel strongly request a DOSA sentence during the sentencing hearing. (8/22/13 RP7). Appellant advised the Court he was hoping for DOSA under the DOSA statute. (8/22/13 RP16). The plea agreement states at page 6 (t), in relevant part: **"The Judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660"**. Appellant did qualify because his past violence was over 10 years as is required by law, Id. The DOSA matter was thereby stipulated to by expressed and implied Consent pursuant to the plea agreement contract papers filed in the Court on August 5, 2013 plea hearing that all parties signed. **SEE: Attached Exhibit, Guilty Plea Agreement.**

Presently Appellant consistently attends several recovery meeting's weekly, which has become his #1 priority, because nothing else in life will matter without being clean & sober. This is paramount.

Additionally, Appellant has been accepted into the Post-Prison Education Program, and will be attending college upon his re-entry back into society. Appellant understands that his #1 priority and college educational **HOPE** are not part of the record, but prays they may be somehow taken into consideration at this time to demonstrate Appellants' strong desire and determination for complete change.

Trial Counsel was correct in stating during the sentencing hearing at P.7, lines 6-22, which states in relevant part: "Mr. Davis reminds me that he wanted to ask for a DOSA, and he believes that Ms. Oliver stated that she would not oppose that but not support it either...

If Your Honor would see fit to grant a DOSA, I think Mr. Davis would be—would benefit from that. He needs help; he needs treatment; he needs to get home to his sister as soon as possible because he's invaluable aid to her with her disabilities.

....I think this is an individual who now that he has regained his facilities, his faculties, can be a worthwhile member of a society but he needs to learn the tools. He needs to gain the tools with which to deal with life and his mental state and not self-medicate with illegal drugs".

Appellant wishes to point out and help clarify an error regarding the States' position on Appellants' DOSA request. SEE: Sentencing Hearing, August 22, 2013, P.8. Lines 24-25. "This was a stipulated sentence based on reducing two cases".

Appellant submits that a "DOSA CONSIDERATION" was in fact agreed upon in the plea agreement by all parties who signed the contract, providing Appellant was legally eligible pursuant to RCW 9.94A.660. SEE: PLEA AGREEMENT, P.6 (t), that appellant initialed, which states: "The Judge may sentence me under the drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.660". The plea agreement is clear and unambiguous regarding the states position and error, and for the state to now argue otherwise, wouldn't that constitute a breach in the plea agreement that was in fact signed by all parties? Appellant is now requesting to receive "SPECIFIC PERFORMANCE" of his plea agreement contract regarding DOSA that Appellant contends was a BINDING CONTRACT" "under contract law and Due Process of Law.

CONCLUSION

Pursuant to RCW 9.94A.660(1)(c), the trial court made a legal error when the State misrepresented that Mr. Davis was not eligible for a DOSA sentence opportunity, and the Court failed to properly exercise its discretion under the sentencing statutes. Mr. Davis sentence should be reversed and his case remanded for resentencing of whether he should receive a sentence under the DOSA statute as was stipulated to in the signed guilty plea agreement contract. Specific Performance is warranted and the relief requested by Appellant.

DATED this 31th day of March, 2014.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read "Jerry Lynn Davis", written over a horizontal dashed line.

Appellant

Jerry Lynn Davis, Pro Se
Cedar Creek Corrections Center
P.O. Box 37, DOC #368483
Littlerock, WA 98556-0037

APPENDIX/EXHIBITS

1. BRADY MOTION TO INTERVIEW ALL WITNESSES
2. ORDER CONTINUING TRIAL X3
3. 8/5/2013 MINUTES OF PROCEEDING
4. SEE: APPENDIX/EXHIBITS SUBMITTED ON MARCH 27, 2014 (FOR DOSA/COLLEGE)
5. DEPT. OF ASSIGNED COUNSEL (letter) DATED MARCH 11, 2014
6. GUILTY PLEA AGREEMENT CASE NO: 12-1-003559-0; and 13-1-00377-7



Pierce County

Department of Assigned Counsel

949 Market Street, Suite 334
Tacoma, Washington 98402-3696
(253) 798-6062 • FAX (253) 798-6715
email: pcassgncnsl@co.pierce.wa.us

Appeal Case No: 45274-0-11

Director of DAC,
Mr. Kawamura's,

MICHAEL R. KAWAMURA
Director

Original Letter.

I forgot to
include it in my
April 20, 2014 letter
to this Court.

April 7, 2014

Jerry Davis, #368483
Cedar Creek Corrections Center
PO Box 37
Littlerock, WA 98556-0037

RE: Discovery Request regarding Pierce County Superior Court Cause Numbers 12-1-03559-0 and 13-1-00377-7

Dear Mr. Davis:

On March 19, 2014, I received your letter dated March 16, 2014, requesting copies of your redacted discovery for the above-reference cause numbers, pursuant to the Washington State RPC's and CrR 4.7 (h) (3). As identified in your letter as well as Ms. Colwell's response letters, a copy of discovery is only permitted to be provided to the defendant upon approval by the prosecuting attorney or order of the court pursuant to CrR 4.7 (h) (3). According to the information available to me, both of your referenced cases were closed/disposed of on August 22, 2013. The Pierce County Prosecuting Attorney is not approving release of discovery on post-disposition cases (i.e. closed cases). The Pierce County Superior Court Bench has likewise adopted the Prosecuting Attorney's position and has advised that they will not approve release of discovery on closed cases. For that reason, the Pierce County Department of Assigned Counsel is unable to release copies of discovery to you or anyone, redacted or otherwise.

Sincerely,

Michael Kawamura
Director

MRK:aps



April 20, 2014

Jerry L. Davis #368483
Cedar Creek Corrections Center
P.O. Box 37
Littlerock, WA 98556-0037

Michael R. Kawamura, Director
Dept. Of Assigned Counsel
949 Market Street, Suite 334
Tacoma, WA 98402-3696

RE: Pierce Co. Cause No's: 12-1-03559-0; 13-1-00377-7 "REQUEST FOR (REDACTED) DISCOVERY MATERIALS" In Open Appeal Cases No' 45274-0-II Division II

NOTICE

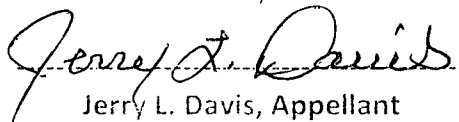
Mr. Karamura,

I received your letter dated April 7, 2014 stating I'm not entitled to my discovery request because you believe my cases are closed. You are mistaken on your belief because I am presently on direct appeal in division 2, case no: 45274-0-II.

Next, you are misrepresenting the RPC (inclusive), and CrR.7 (h) (3), which states in relevant part: "Further, a defense attorney SHALL be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecuting authority or order of the court". It is the redactions that must be approved to protect the alleged victim's information, the states C-I, etc... and not the "DISCOVERY REQUEST".

PLEASE TAKE NOTICE: Both of my cases out of Pierce County are OPEN IN Appeal No: 45274-0-II. Washington Court of Appeals Division II. I have a Constitutional right to have access to the Court of Appeals to raise all my claims on direct appeal and/or in a PRP. Will you please mail me my entire case files in both of my cases upon receiving THIS letter before it's too late? You are responsible for my relevant request, so that my rights are not further violated, depriving me access to the Court of Appeals in order to raise all my issues and claims.

Thank you!


Jerry L. Davis, Appellant

Cc: Washington Court of Appeals Div. II
Stephanie C. Cunningham, Attorney
File

RECEIVED
APR - 8 2014

CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

SUPPLEMENTAL APPENDIX

1. GUILTY PLEA AGREEMENT
CAUSE NO: 13-1-00377-7
(DOSA REQUEST p.6(t))

2. LETTER TO APPELLANT ATTORNEY
STEPHANIE C. CUNNINGHAM
DATED APRIL 3, 2014

April 20, 2014

Jerry L. Davis #368483
Cedar Creek Corrections Center
P.O. Box 37
Littlerock, WA 98556-0037

Stephanie C. Cunningham
Attorney At Law
4616 25th Avenue NE #552
Seattle, WA 98105

RE: STATE vs. DAVIS, Appeal NO:45274-0-II
Pierce County Cause NO(s): 12-1-03559-0; and 13-1-00377-7

Dear Ms. Cunningham,

In your March 26th, 2014 letter you stated you want to help me if you can.

I've requested the hearing transcripts for the months of May, June, and July 2013 for all TRIAL CONTINUANCES ORDERED but you didn't have them included for my appeal to help demonstrate trial counsels failure to draft and file an important **MOTION TO DEPOSE** the alleged victim, Mr. Duvall. This constituted a serious **BRADY VIOLATION**, WHICH WOULD HAVE CHANGED THE RESULTS OF MY PROCEEDINGS. Will you please help me by requesting the rest of my Transcripts where Mr. Schoenberger goes on record and admits failing to file the critical **MOTION TO DEPOSE** Mr. Duvall, and when counsel requested more time to prepare the MOTION for trial, the Court denied the request. Both of these actions were prejudicial to my proceedings.

Also, will the Court of Appeals be given an opportunity to examine the alleged victims WRITTEN STATEMENT?? Mr. Duvall stated that I ran off into the WET-LAND. There was NOT a fence at the swamp water-line of Mr. Duvalls' property either, which is a fact, because I never had to go over a fence when I ran in fear for my life while being shot at by Mr. Duvall.

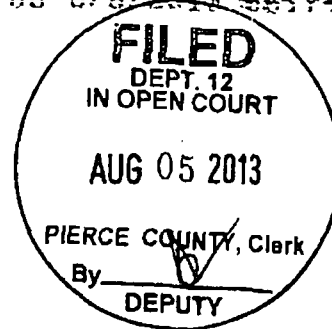
Neither of my former attorneys, nor will Dept. Of Assigned Counsel provide me with a copy of my entire (redacted) discovery materials in either cause numbers. It's critical that the Appellate Court examine the alleged victims WRITTEN STATEMENT (2 PAGES). Will you please help me with these Appeal documents while we still have time?

Thank you for your time and understanding in my request for your help in this matter.

MY VERY KINDEST REGARDS


APPELLANT

Cc: David Ponzoha, Clerk of Appeals Court, Div II; File.



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 13-1-00377-7

vs.
Jerry Cyan Davis

PROSECUTOR'S STATEMENT
 REGARDING AMENDED
 INFORMATION

Defendant.

The State requests the Court to consider accepting a plea to the filing of an Amended
 Information pursuant to RCW 9.94A.431 for the following reasons:

The defendant is pleading
guilty to take advantage of the states
offer

☐ This is a drug case and there is no victim.

☐ There is no victim.

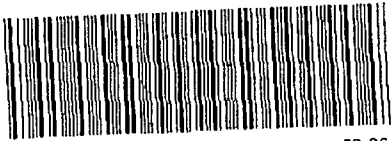
☒ The victim has been notified of the amended Information.

☐ The victim has not been notified of the amended Information.

Date

8-5-13

[Signature]
 KATHLEEN OLIVER
 Deputy Prosecuting Attorney
 WSB # 18252



13-1-00377-7 40989943 STTDFG 08-06-13



**Superior Court of Washington
For Pierce County**

State of Washington

Plaintiff

vs.

JERRY LYNN DAVIS

Defendant

No. 13-1-00377-7

**Statement of Defendant on Plea of
Guilty to Non-Sex Offense
(STTDFG)**

1. My true name is: JERRY LYNN DAVIS
2. My age is: 48
3. The last level of education I completed was GED
4. **I Have Been Informed and Fully Understand That:**
 - (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is James A Schoenberger
 - (b) I am charged with the crime(s) of. taking motor vehicle without permission 2° as set out in the amended Information, dated, 08/05/13, a copy of which I hereby acknowledge previously receiving and reviewing with my lawyer. JLD
(Defendant's initials)

The elements of ☒ this crime ☐ these crimes
are as set out in the amended Information, dated 08/05/13, a copy of which I hereby
acknowledge previously receiving and reviewing with my lawyer. JLD
(Defendant's initials)

✓ 5. **I Understand I Have the Following Important Rights, and I Give Them Up by Pleading Guilty:**

- (a) The right to a speedy and public trial by an impartial jury in the county where the crime was allegedly committed,
- (b) The right to remain silent before and during trial, and the right to refuse to testify against myself,
- (c) The right at trial to hear and question the witnesses who testify against me,
- (d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;
- (e) The right to be presumed innocent unless the State proves the charge beyond a reasonable doubt or I enter a plea of guilty,
- (f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as time for trial challenges and suppression issues.

6. **In Considering the Consequences of My Guilty Plea, I Understand That:**

- (a) Each crime with which I am charged carries a maximum sentence, a fine, and a **Standard Sentence Range** as follows:

COUNT NO.	OFFENDER SCORE	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements*	COMMUNITY CUSTODY RANGE (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM TERM AND FINE
1	1	9+	22 - 29	-	5 years \$10,000
2					
3					

*Each sentencing enhancement will run consecutively to all other parts of my entire sentence, including other enhancements and other counts. The enhancement codes are: (F) Firearm, RCW 9 94A 533, (D) Other deadly weapon, RCW 9 94A 533, (V) VUCSA in protected zone, See RCW 69 50 435, RCW 9 94A 6533 (6), (VH) Vch Hom, see RCW 46 61 520, (JP) Juvenile present, See RCW 9 94A 605, (CSG) Criminal street gang involving minor, RCW 9 94A 533, (AE) Endangerment while attempting to elude. RCW 9 94A 533

- ✓ (b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.
- ✓ (c) The prosecuting attorney's statement of my criminal history is attached to this statement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I have attached my own statement, I assert that it is correct and complete. If the prosecutor and I disagree about the computation of the

offender score, I understand that this dispute will be resolved by the court at sentencing. I waive any right to challenge the acceptance of my guilty plea on the grounds that my offender score or standard range is lower than what is listed in paragraph 6(a). If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

- ✓(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding on me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.
- ✓(e) In addition to sentencing me to confinement, the judge will order me to pay \$500.00 as a victim's compensation fund assessment and any mandatory fines or penalties that apply to my case. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.
- (f) **For crimes committed prior to July 1, 2000:** In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months. If the total period of confinement is more than 12 months, and if this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community custody. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community custody. The actual period of community custody may be longer than my earned early release period. During the period of community custody, I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me.
- For crimes committed on or after July 1, 2000:** In addition to sentencing me to confinement, under certain circumstances the judge may order me to serve up to one year of community custody if the total period of confinement ordered is not more than 12 months, but only if the crime I have been convicted of falls into one of the offense types listed in the following chart. For the offense of failure to register as a sex offender, regardless of the length of confinement, the judge will sentence me for up to 12 months of community custody. If the total period of confinement ordered is more than 12 months, and if the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the term established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9A.728 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody term will be based on the offense type that dictates the longest term of community custody.

OFFENSE TYPE	COMMUNITY CUSTODY TERM
Serious Violent Offenses as defined by RCW 9 94A.030(45)	36 months
Violent Offenses as defined by RCW 9 94A.030(54)	18 months
Crimes Against Persons as defined by RCW 9 94A.411(2)	12 months
Offenses under Chapter 69.50 or 69.52 RCW (not sentenced under RCW 9 94A.660)	12 months
Offenses involving the unlawful possession of a firearm where the offender is a criminal street gang member or associate	12 months

Certain sentencing alternatives may also include community custody.

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, including additional conditions of community custody that may be imposed by the Department of Corrections. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

- (g) The prosecuting attorney will make the following recommendation to the judge:
- 29 months; concurrent with 12-1-03559-0; credit for time served, \$200 costs, \$100 DNA, \$500 CPVA; \$500 DAC; no contact with victim or victims; ~~restoration for all if any~~; maintain law abiding behavior; release interests in all property seized by law enforcement.
- State agrees sentencing may be set over to allow Mr Davis to put his affairs in order and arrange for care of his disabled sister.

☐ The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

- ✓(h) **The judge does not have to follow anyone's recommendation as to sentence.** The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.

- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act
- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts

✓ I understand that if a standard range sentence is imposed upon an agreed offender score, the sentence cannot be appealed by anyone. If an exceptional sentence is imposed after a hearing, either the State or I can appeal the sentence.

✓(i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

✓(j) I understand that I may not possess, own, or have under my control any firearm, and under federal law any firearm or ammunition, unless my right to do so is restored by the court in which I am convicted or the superior court in Washington State where I live, and by a federal court if required. I must immediately surrender any concealed pistol license.

✓(k) I understand that I will be ineligible to vote until that right is restored in a manner provided by law. If I am registered to vote, my voter registration will be cancelled. Wash. Const. art. VI, § 3, RCW 29A.04.079, 29A.08.520.

✓(l) Government assistance may be suspended during any period of confinement

✓(m) I understand that I will be required to have a biological sample collected for purposes of DNA identification analysis. I will be required to pay a \$100.00 DNA collection fee

Notification Relating to Specific Crimes: If any of the following paragraphs DO NOT APPLY, counsel and the defendant shall strike them out. The defendant and the judge shall initial all paragraphs that DO APPLY.

- _____ (n) ~~This offense is a most serious offense or "strike" as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole~~
- _____ (o) ~~The judge may sentence me as a first-time offender instead of giving a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days' confinement and up to one year of community custody plus all of the conditions described in paragraph (c). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.~~

- ____ (p) The judge may sentence me under the **Parenting Sentencing Alternative** if I qualify under RCW 9.94A.655. If I am eligible, the judge may order DOC to complete either a risk assessment report or a chemical dependency screening report, or both. If the judge decides to impose the Parenting Sentencing Alternative, the sentence will consist of 12 months of community custody and I will be required to comply with the conditions imposed by the court and by DOC. At any time during community custody, the court may schedule a hearing to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. The court may modify the conditions of community custody or impose sanctions. If the court finds I violated the conditions or requirements of the sentence or I failed to make satisfactory progress in treatment, the court may order me to serve a term of total confinement within the standard range for my offense.
- ____ (q) **If this crime involves kidnapping involving a minor**, including unlawful imprisonment involving a minor who is not my child, I will be required to register where I reside, study or work. The specific registration requirements are set forth in the "Offender Registration" Attachment. These requirements may change at a later date. I am responsible for learning about any changes in registration requirements and for complying with the new requirements.
- ____ (r) **If this is a crime of domestic violence**, I may be ordered to pay a domestic violence assessment of up to \$100.00. If I, or the victim of the offense, have a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.
- ____ (s) **If this crime involves prostitution or a drug offense associated with hypodermic needles**, I will be required to undergo testing for the human immunodeficiency (HIV/AIDS) virus.
- 50 (t) **The judge may sentence me under the drug offender sentencing alternative (DOSA)** if I qualify under RCW 9.94A.660. If I qualify and the judge is considering a residential chemical dependency treatment-based alternative, the judge may order that I be examined by DOC before deciding to impose a DOSA sentence. If the judge decides to impose a DOSA sentence, it could be either a prison-based alternative or a residential chemical dependency treatment-based alternative.
- If the judge imposes the **prison-based alternative**, the sentence will consist of a period of total confinement in a state facility for one-half of the midpoint of the standard range, or 12 months, whichever is greater. During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose a term of community custody of one-half of the midpoint of the standard range.
- If the judge imposes the **residential chemical dependency treatment-based alternative**, the sentence will consist of a term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, and I will have to enter and remain in a certified residential chemical dependency treatment program for a period of **three to six months**, as set by the court.
- As part of this sentencing alternative, the court is required to schedule a progress hearing during the period of residential chemical dependency treatment and a treatment termination hearing scheduled three months before the expiration of the term of community custody. At either hearing, based upon reports by my treatment provider and the department of

corrections on my compliance with treatment and monitoring requirements and recommendations regarding termination from treatment, the judge may modify the conditions of my community custody or order me to serve a term of total confinement equal to one-half of the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

During the term of community custody for either sentencing alternative, the judge could prohibit me from using alcohol or controlled substances, require me to submit to urinalysis or other testing to monitor that status, require me to devote time to a specific employment or training, stay out of certain areas, pay \$30.00 per month to offset the cost of monitoring and require other conditions, such as affirmative conditions, and the conditions described in paragraph 6(e). The judge, on his or her own initiative, may order me to appear in court at any time during the period of community custody to evaluate my progress in treatment or to determine if I have violated the conditions of the sentence. If the court finds that I have violated the conditions of the sentence or that I have failed to make satisfactory progress in treatment, the court may modify the terms of my community custody or order me to serve a term of total confinement within the standard range.

- _____ (u) If I am subject to community custody and the judge finds that I have a **chemical dependency** that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.
- _____ (v) If this crime involves the **manufacture, delivery, or possession with the intent to deliver methamphetamine**, including its salts, isomers, and salts of isomers, or amphetamine, including its salts, isomers, and salts of isomers, and if a fine is imposed, \$3,000 of the fine may not be suspended. RCW 69.50.401(2)(b).
- _____ (w) If this crime involves a **violation of the state drug laws**, my eligibility for state and federal food stamps, welfare, and education benefits may be affected. 20 U.S.C. § 1091(r) and 21 U.S.C. § 862a.
- 50 (x) I understand that RCW 46.20.285(4) requires that my driver's license be revoked if the judge finds **I used a motor vehicle in the commission of this felony**.
- _____ (y) If this crime involves the offense of **vehicular homicide** while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(14).
- _____ (z) If I am pleading guilty to **felony driving under the influence of intoxicating liquor or any drugs, or felony actual physical control** of a motor vehicle while under the influence of intoxicating liquor or any drug, in addition to the provisions of chapter 9.94A RCW, I will be required to undergo alcohol or chemical dependency treatment services during incarceration. I will be required to pay the costs of treatment unless the court finds that I am indigent. My driving privileges will be suspended, revoked or denied. Following the period of suspension, revocation or denial, I must comply with ignition interlock device requirements.

- ___ (aa) The crime of _____ has a mandatory **minimum sentence** of at least _____ years of total confinement. This law does not apply to crimes committed on or after July 24, 2005, by a juvenile who was tried as an adult after decline of juvenile court jurisdiction. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6[n].
- ___ (bb) I am being **sentenced for two or more serious violent offenses** arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise
- ___ (cc) I understand that the offense(s) I am pleading guilty to include(s) a **Violation of the Uniform Controlled Substances Act in a protected zone enhancement or manufacture of methamphetamine when a juvenile was present** in or upon the premises of manufacture enhancement. I understand these enhancements are mandatory and that they must run consecutively to all other sentencing provisions.
- ___ (dd) I understand that the offense(s) I am pleading guilty to include(s) a **deadly weapon, firearm, or sexual motivation enhancement**. Deadly weapon, firearm, or sexual motivation enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon, firearm, or sexual motivation enhancements.
- ___ (ee) I understand that if I am pleading guilty to (1) **unlawful possession of a firearm(s) in the first or second degree** and (2) **felony theft of a firearm or possession of a stolen firearm**, I am required to serve the sentences for these crimes consecutively to one another. If I am pleading guilty to **unlawful possession of more than one firearm**, I must serve each of the sentences for unlawful possession consecutively to each other.
- ___ (ff) If I am pleading guilty to the crime of **unlawful practices in obtaining assistance** as defined in RCW 74.08.331, no assistance payment shall be made for at least six months if this is my first conviction and for at least 12 months if this is my second or subsequent conviction. This suspension of benefits will apply even if I am not incarcerated. RCW 74.08.290.
- ___ (gg) The judge may authorize **work ethic camp**. To qualify for work ethic authorization my term of total confinement must be more than twelve months and less than thirty-six months, I cannot currently be either pending prosecution or serving a sentence for violation of the uniform controlled substance act and I cannot have a current or prior conviction for a sex or violent offense. RCW 9.94A.690.

7. I plead guilty to count(s) I _____ as charged in the _____ amended _____ Information, dated 08/05/13.
8. I make this plea freely and voluntarily
9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.
10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement

- 11 The judge has asked me to state what I did in my own words that makes me guilty of this crime.
This is my statement:

- ☐ IN RE BARR I am entering a plea of guilty to a crime that I in fact did not commit. My attorney has discussed with me all of the elements of the original charge(s) and the elements of the amended charge(s) and I understand them all. There is a factual basis for the original charge(s). I understand that the prosecution would be unable to prove the amended charge(s) at trial.
- ☐ NEWTON/ALFORD I do not admit guilt but I have reviewed the evidence with my attorney and believe that there is a substantial likelihood I would be convicted if this proceeded to trial. I am pleading guilty in order to take advantage of the State's offer. I acknowledge there is a factual basis for the charge(s) in the Original Information that is set forth in the Declaration for Determination of Probable Cause.

59 ☒ In WA, on or about January 26th 2013, I ~~was~~ took a vehicle that was not mine without the permission of the true owner.

☐ Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs and the "Offender Registration" Attachment, if applicable. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

James A. Schoenberger
Defendant

I have read and discussed this statement with the defendant. I believe that the defendant is competent and fully understands the statement.

KATHLEEN OLIVER
Prosecuting Attorney

James A. Schoenberger
Defendant's Lawyer

KATHLEEN OLIVER
Print Name

James A Schoenberger 33603
WSBA No

WSBA No

18252

The defendant signed the foregoing statement in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check appropriate box]:

- ☐ (a) The defendant had previously read the entire statement above and that the defendant understood it in full;
- ☐ (b) The defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full, or
- ☐ (c) An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full. The Interpreter's Declaration is included below

Interpreter's Declaration I am a certified or registered interpreter, or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands- I have translated and interpreted this document for the defendant from English into that language I have no reason to believe that the defendant does not fully understand both the interpretation and the subject matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) _____, (state) _____, on (date) _____.

Interpreter

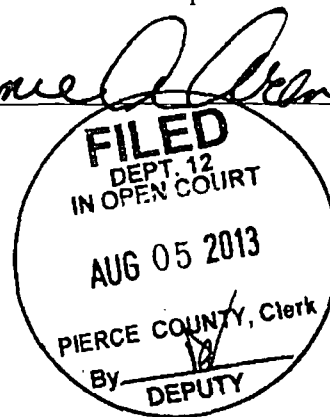
Print Name

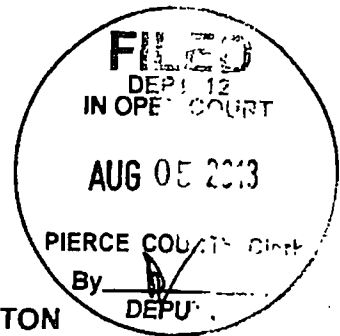
I find the defendant's plea of guilty to be knowingly, intelligently and voluntarily made. Defendant understands the charges and the consequences of the plea There is a factual basis for the plea. The defendant is guilty as charged

Dated: _____

August 5, 2013

Stephanie A. Blank
Judge





IN THE SUPERIOR COURT FOR PIERCE COUNTY WASHINGTON

State of Washington,

Plaintiff

vs.

JERRY LYNN DAVIS

Defendant

No 13-1-00377-7

SCHEDULING ORDER

IT IS HEREBY ORDERED that:

1. The following court dates are set for the defendant:

Hearing Type	Date & Time	Courtroom
SENTENCING DATE	Thursday, Aug 22, 2013 9:00 AM	250

2. The defendant shall be present at these hearings and report to the courtroom indicated at
930 Tacoma Avenue South, County-City Building, Tacoma, Washington, 98402

FAILURE TO APPEAR WILL RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST

3. ☒ DAC; Defendant will be represented by Department of Assigned Counsel
☐ Retained Attorney; Defendant will hire their own attorney or, if indigent, be Screened (interviewed) for Department of Assigned Counsel Appointment.

DATED: 08/05/13


Copy Received:


 JERRY LYNN DAVIS, Defendant


 JAMES A SCHOENBERGER
 Attorney for Defendant/Bar #33603

Ordered By


 JUDGE COMMISSIONER


 KATHLEEN OLIVER
 Prosecuting Attorney/Bar #18252